



SHARPE
& ABEL

**DISRUPTION IN THE
LEGAL SECTOR**

How to make it work for you



For many decades, the legal sector has continued its long-established methods of business, despite other industries changing and adapting with the times. But, in a time of exponential change and innovation, such traditional legal practice processes are fast becoming outdated and inefficient. With client expectations and demands rising, law firms are having to evolve to stay competitive and maximise client value.

Many believe that this makes the legal sector ripe for disruption and eagerly await the intervention of technology. But what if such disruption is already occurring through incremental changes and adoptions? We suspect there will be no 'Big Bang' moment where the old legal services industry morphs into the new shiny, fit-for-the-future legal services industry.

Alternative Legal Service Providers, Alternative Fee Arrangements, and Alternative Dispute Resolution are examples of legal processes that have already disrupted the sector in recent years, by displacing its traditional methods, and becoming significant aspects of the legal sector today. The advancement of 'legal technology', which we will discuss in a follow-up paper, has also revolutionised the market, by helping to level the playing field: disruptive innovation is not solely the preserve of big law for their largest of clients to benefit from.

There is now a developing picture of a select group of firms making changes to move away from old models (which typically best suit law firms) to embrace new models which leverage new regulatory freedoms and technological advancements, to provide client-centric legal services.

But how do you identify these forward-looking firms? And how do you avoid the law firm dinosaurs?

This paper will examine some ways disruption has already occurred in the legal sector and provide you with questions to ask your law firm, or a firm you are looking to hire, to ensure that they have your best interests at heart and are not stuck in the past.

Disruption

Disruption is a powerful concept that became increasingly popular in the business world after Clayton Christensen used it to introduce his idea of 'disruptive innovation' in his 1997 book *The Innovator's Dilemma*. His idea refers to an innovation that transforms an existing market or sector by taking root in simple applications at the bottom of a market, and then persistently and rapidly moving up the market, eventually displacing the traditional and established services or products.

By targeting low-end consumers initially, these disruptive innovations create affordability and accessibility to enable mass adoption.



Innovations that are considered disruptive are those that:

1. Provide an inferior service to the mainstream product or process.
2. Provide added value, such as cost and accessibility.
3. Are highly differentiated.
4. Target low-end, low-value customers first.
5. May have associated high risks initially.

Disruption in the Legal Industry

Many people question whether such disruption can occur in the legal industry, with it being such an established and traditional industry, but we believe that legal practices and processes do have the ability to disrupt, and that they have already done so.

Many commentators assume that disruption has to be technological, so still eagerly await the technological innovation that delivers this disruption. This isn't necessarily the case.

Disruption can occur in processes, service, brand, or anywhere along Doblin's taxonomy of innovation:



Law firms using a model or process that significantly differs from the traditional, and that changes the delivery of legal services, are valid forms of disruption, and are at the forefront of the disruption process. Three examples of this are [Alternative Legal Service Providers](#), [Alternative Fee Arrangements](#), and [Alternative Dispute Resolution](#), and all have the hallmarks of disruption that has already happened.

ALTERNATIVE LEGAL SERVICE PROVIDERS (ALSPS)

Alternative Legal Service Providers (ALSPs) are businesses that provide services that were traditionally offered by law firms, but at a lower cost, increased speed and often to a higher degree of quality and reliability. Originally, ALSPs were seen as high risks, with concerns regarding quality of work and data security being a significant threat, and therefore they only tended to deal with low-value routine tasks that law firms could contract out cheaply to cut their costs.

However, as the ALSP market has continued to grow significantly in recent years, along with the level of specialist expertise found within these businesses, law firms have gained confidence in the market, and have started to recognise the benefits they provide to both themselves and their clients.

ALSPs also now cover a wide range of high-demand legal services, such as e-discovery, litigation and investigation support, and legal research, that previously only law firms offered. This growth has enabled the enhanced collaboration of companies, and the movement of extensive amounts of legal work out of law firms. This not only benefits the customer, but also the firm, as it means their clients receive better service at reduced costs, faster speed, and increased expertise.

According to the Alternative Legal Service Providers 2019 Report, ALSPs accounted for \$10.7bn of the legal services market in 2017, a compounded annual growth rate of almost 12.9% from 2015, with the Big Four accounting firms (Deloitte, EY, KPMG, PwC) being some of the largest and fastest growing. The report also estimated a future year-on-year growth of 24%. These statistics highlight the recent rapid surge of the market – a trend indicative of disruption.

In a relatively short period of time, ALSPs have developed from a relatively unknown and insignificant trend into a rapidly growing sector that is now a crucial part of the legal industry.

ALSPs are used mainly by large corporate departments and large law firms who are looking to access specialised expertise, as well as use resources more efficiently and strategically. However, this does not mean that accessing the benefits of ALSPs is not an option for smaller businesses or law firms. Some forward-looking law firms have taken onboard the process improvements that ALSPs offer and have redesigned their structure and delivery model into one which is leaner and smarter and offers a greater choice of specialisms beyond 'pure law'.

Questions to ask...

- How are you revolutionising the 'processes of law' within your firm?

- Do you have flexible legal staffing? How agile is your operation in terms of scaling up or down?

- Do you offer 'non-legal' but complementary services and specialisms: consultancy, project management, research capability?

- Do your lawyers work alongside other professionals? Technologists, researchers, project managers, data scientists etc?
Providing a diversity of experience and skills?

- What can you/have you done to make legal services good value?

- What processes have you put in place to ensure consistency and transparency

Professor Richard Susskind, author and legal technology specialist: "The classic problem with hourly billing is it incentivizes inefficiency, where profitability comes from working as many hours as the client is willing to pay for."

ALTERNATIVE FEE ARRANGEMENTS (AFAs)

Alternative Fee Arrangements (AFAs) are types of legal fee arrangements where clients pay lawyers something other than a traditional hourly rate for the legal work performed, such as flat fees. As opposed to the mainstream hourly billing, which was highly expensive and unpredictable, AFAs offer pricing certainty and cost-saving opportunities. In the legal sector today, efficiency is crucial for law firms and legal departments to stay competitive and retain their clients. If firms continued to utilise hourly billing, such increased efficiency would only lead to decreased profits, with the most efficient lawyers making the least amount of money. This is clearly highly unproductive and has further facilitated the growth of AFAs, as they can bring benefits for both law firms and clients.

At GlaxoSmithKline, 80% of the work assigned to law firms in 2018 was through AFAs, a dramatic increase from only 3% in 2008. Doing so has led to mass reductions in outside counsel fees and savings of tens of millions of dollars, leading them to now claim that they are on a mission to end the billable hour. However, generally speaking, the alternative fee arrangement is underused in the legal industry, despite regular predictions that its usage will increase.

According to Bloomberg Law's 2020 Legal Operations Survey, AFAs are more commonly used by larger law firms (those with more than 100 practising lawyers) than smaller ones. But even larger firms tend not to use AFAs for the majority of their work. AFAs are good for the client and good for the law firm, so why doesn't everyone use them as much as possible? The main barriers to this are:

- Law firms don't know how to determine accurate and profitable pricing (their data problem)
- The effort and time it takes for the law firm to scope the work, so it can be priced (their project management deficiencies)
- Clients don't ask for them enough

Do you want to work with a law firm which does not have a handle on its own profitability and the value of its work? Do you want to work with a law firm that does not use even basic project management skills, such as project scoping and planning? Your business deserves better than this – and as the client you should ask for more.

Examples of fee arrangement variations

- Fixed/capped fee: fees are agreed between lawyer and client at the outset.
- Flat fee plus hourly rate: an hourly rate applies when the scope of legal work is less defined.
- Budgeted fee with collar: the client and the lawyer agree to a budgeted fee as well as a collar. If the lawyer exceeds the budgeted fee then the client pays a % of the over-run. If less than the collar, the lawyer pays back a % of savings to the client.
- Contingency fees/Success fees: a fee is charged only if the matter is 'successful'.
- Task or unit-based billing: client and lawyer agree on fixed amounts to be charged for identified tasks or components in a matter.
- Project Management: client and lawyer develop a plan for how the work will be conducted and agree on an implementation budget.
- Holdbacks: a portion of the fee is held back by the client or the firm and not paid until the end of a matter or when some other stage is reached.
- Equity in lieu of fees

AFA considerations...

- What experience does the firm have with different AFA options? You want a firm that is confident and comfortable discussing AFAs.
- Does the firm proactively offer AFAs, or do you have to raise the subject? Proactivity is always appreciated – a range of options and their associated pros and cons should be provided.
- How will the firm provide effective project management and accountability to budget?
- If AFAs are discussed, do the suggested options fit with the strategy and approach to the case?
- Fee structure incentivises behaviour, so what behaviour do you want to encourage? Slow and cautious, quick and light-touch etc.?

ALTERNATIVE DISPUTE RESOLUTION (ADR)

Alternative Dispute Resolution (ADR) relates to methods of resolving disputes between parties that does not involve going to court, like the traditional way did. Main forms of ADR are mediation, conciliation, and arbitration, which all involve the use of a neutral third party, such as mediators, to help effectively resolve conflicts/disputes.

Although ADR went against the mainstream current of dispute resolution, it has become increasingly popular in recent years due to the many added benefits they hold, such as significant savings in time and money, confidentiality, and flexibility. By driving cases out of the courtroom, these alternative resolutions also tend to relieve pressure on the continuously in-demand court systems.



As a result of this, the use of ADR has become supported and even encouraged by governments through both mandatory and optional schemes that require a form of ADR before trial. The combination of all these factors has meant that demand for ADR services has soared, and driven industry growth dramatically.

Whilst many clients may relish the idea of ‘their day in court’ the reality is that litigation can be a blunt tool, and one (even if you win) that may not deliver the results that you seek, whilst also taking a huge emotional toll.

What to ask a law firm about ADR:

- What forms of dispute resolution do you undertake?
- How many cases similar to mine have you undertaken and what were the outcomes?
- How do you arrive at a dispute resolution strategy?
- Other than a law degree, what kind of special training or knowledge do you have that might apply in my situation? What is your approach or philosophy to winning or representing a case?
- How will you help me decide what is best for me?

IN CONCLUSION...

At this uncertain time, when Covid-19 has ravaged the world economy, the future of even the most comfortable businesses has been thrown into doubt. Some legal commentators predict that the virus is the disruptor that will finally upend the dominance of the ‘traditional’ law firms.

To be clear, we don’t think that law firms should be looking to undertake a roots and branch transformation and embrace every innovation out there, but as clients, you should expect to see evidence from your law firm that they are not complacent and are looking at ways to improve their services and increase their value to you.

No law firm can be perfect, but you need to find one that is willing to step-up and try harder for you.



Full transparency: we think we hold up well against the questions we have posed in this document. We are a small firm with business smarts and niche industrial expertise. We operate in a way that challenges the traditional law firm model and work in partnership with our clients to provide services that they want and deliver them in a way that suits their requirements.

Our clients are creating the future. They're producing intelligent built environments and infrastructure that keep us safe and comfortable. They're rolling out technology that allows humans to connect and communicate. We support them to make it all happen.

We are based in Melbourne, but we share our know-how with clients all across Australia and Asia-Pacific. Sharpe & Abel's qualified people hail from different parts of the globe; diversity that opens doors for your business to change the world.

You produce smart solutions. We support clever companies.

Contact us...

Interested in finding out more or have any questions?

Please get in touch with our team at:

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www.sharpeandabel.com